

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

May 26, 2005

In Reply Refer To:
HC Power Marketing LLC
Docket No. ER02-388-003

Van Ness Feldman, P.C.
Attn: Margaret A. Moore, Esq.
Attorney for HC Power Marketing LLC
1050 Thomas Jefferson Street, N.W.
Seventh Floor
Washington, DC 20007

Dear Ms. Moore:

1. On January 13, 2005, HC Power Marketing LLC (HC Power) filed an updated market power analysis pursuant to the requirements of the Commission's order granting HC Power authority to sell capacity and energy at market-based rates.¹ HC Power already has on file the Commission's market behavior rules.² As discussed below, the Commission concludes that HC Power satisfies the Commission's standards for market-based rate authority.
2. HC Power is a Delaware corporation with its principal place of business in New York. HC Power states that it is a wholly-owned subsidiary of Natsource LLC

¹ *HC Power Marketing LLC*, Docket No. ER02-388-000 (Jan. 17, 2002) (unpublished letter order).

² *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003). HC Power's tariff incorporating the Commission's market behavior rules was previously accepted by the Commission. *See HC Power Marketing LLC*, Docket No. ER02-388-002 (Mar. 29, 2004) (unpublished letter order).

(Natsource),³ a leading broker of energy-related products and participant in the power, natural gas, coal, weather hedging, and emissions allowance credit markets. Blue Natsource Holding Co., Inc., which owns the majority membership interest in Natsource, is an S corporation holding company that is owned by individual investors who are employees of Natsource.

3. HC Power states that neither it nor any of its affiliates owns or controls any electric power generation, transmission, or distribution facilities, and that it is not affiliated with any entity which owns, operates, or controls such facilities in the United States. In addition, HC Power states that it is not affiliated with any public utility that has a franchised service territory.

Procedural Matters

4. Notice of HC Power's filing was published in the *Federal Register*, 70 Fed. Reg. 4834 (2005), with motions to intervene and protests due on or before February 3, 2005. None was filed.

Discussion

Market-Based Rate Authorization

5. The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁴ As discussed below, the Commission concludes that HC Power satisfies the Commission's standards for market-based rate authority.

6. In its order issued in *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004), the Commission adopted two

³ The membership interests in Natsource are as follows: Blue Natsource Holding Co., Inc. (50.3 percent), Tullet & Tokyo Liberty, Inc. (20 percent), Tokyo Tanshi Ltd. (16.9 percent), and several other members who hold less than a 10 percent interest. Tullet & Tokyo Liberty, Inc. and Tokyo Tanshi Ltd. are financial institutions.

⁴ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen. According to the submittal, neither HC Power nor any of its affiliates owns or controls any electric generation, transmission, or distribution facilities, or has any long-term power purchase positions in any market in the United States. Based on this representation, the Commission finds that HC Power satisfies the Commission's generation market power standard for the grant of market-based rate authority.

7. HC Power states that neither it nor any of its affiliates owns or controls any transmission facilities in the United States. Based on this representation, the Commission finds that HC Power satisfies the Commission's transmission market power standard for the grant of market-based rate authority.

8. HC Power explains that neither it nor any of its affiliates owns or controls fuel supplies, unique land sites, or any other inputs to electric power generation in any geographic market that could be used to prevent competitors from entering the market. Based on this representation, the Commission is satisfied that HC Power cannot erect barriers to entry.

9. HC Power states that neither it nor any of its affiliates is affiliated with an electric utility with a franchised service territory. Based on this representation, the Commission finds that HC Power satisfies the Commission's concerns with regard to affiliate abuse.

10. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.⁵ Electric

⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/doc-filing/eqr.asp>.

Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.⁶

11. HC Power must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.⁷ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, HC Power is directed, within 30 days of the date of issuance of this order, to revise its market-based rate tariff to incorporate the following provision:

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

⁶ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10(b) (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

⁷ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

12. In addition, HC Power is directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

By direction of the Commission.

Linda Mitry,
Deputy Secretary.